TAHARUDDIN BIN AHMAD

v.

LEO MOI & ANOR.

HIGH COURT MALAYA, KUANTAN
LAMIN MOHD. YUNUS J
[CIVIL SUIT NO. 73 OF 1984]
12 SEPTEMBER 1989

TORT: *Running down - Different versions of accident given by the parties - Question of how the accident occurred - Sketch plans.*

The plaintiff and the 1st defendant were involved in an accident on 24 April 1981 at about the 6th Milestone on the Gambang/Kuantan road.

The plaintiff was riding a motorcycle from Kuantan. On reaching the 6th Milestone at the junction of Kuantan/Pekan his motorcycle collided with the motorcar coming from the opposite direction driven by the 1st defendant.

According to the plaintiff, when he arrived at the said junction, a motor lorry overtook him and made a turn to the left without any signal. This caused the plaintiff to apply his brakes so that the lorry could pass. After that he saw in front of him two on-coming cars in a single file. The 2nd car driven by the 1st defendant overtook the first car and whilst overtaking encroached onto the path of the plaintiff causing a collision which dragged the plaintiff and his cycle to the car's side of the road. The plaintiff was thrown off his cycle.

According to the 1st defendant, he was following a lorry, and the lorry upon nearing the Kuantan/Pekan junction the lorry slowed down (at the same time the lorry driver gave a hand signal indicating that the lorry was going to turn right). The 1st defendant also applied his brakes. When the lorry was turning right the 1st defendant saw the plaintiff's cycle flung towards the off-side of the car and a collision occured. He denied overtaking any car at that moment.

In the police report made by the plaintiff 4 days after the accident, he stated that "satu lorry dari Jalan Gambang masuk ke Jalan Pekan dan saya terbabas dan sebuah kereta Mercedes di depan saya terus langgar saya".

The sketch plans did not show any dragging or scratch marks on the road surface from the right lane to the left lane as one faces Kuantan. The same also showed broken glass in front of the defendant's car with a short brake mark just directly in front of the off-side tyre of the 1st defendant's car. The damage on the 1st defendant's car was on the front off-side of the same. The sketch plan showed that the 1st defendant's car was almost parallel to the centre white line of the road; having been deflected to its left by about 6 inches.

Held:

[1] There was material contradictions between the plaintiff's testimony and his police report.

[2] A more reasonable version of the accident would be that when the lorry came to be in front of the plaintiff the lorry would have braked. This must have caused the plaintiff to take evasive action and so he applied his brakes and he skidded, lost control and went off to his right side and knocked into the off-side of the 1st defendant's car.

[3] The absence of the dragging lines and the presence of broken glass lends support to the accident occurring in the manner stated in (2) above.

[4] The evidence shows that the accident collision occurred on the 1st defendant's side of the road and that the plaintiff had come diagonally from his side of the road onto the lane of the 1st defendant's car hitting the front off-side of the car and deflected the same to the left.

[5] The plaintiff has failed to prove his case.

[Plaintiff's case dismissed with costs.]

For the plaintiff - Harcharan Singh; M/s. S. Harcharan Singh Randhawa & Partner
For the defendant - D.C. Alfred; M/s. Sangara & D.C. Alfred

JUDGMENT

Lamin Mohd Yunus J:

The plaintiff is claiming for damages as a result of a motor accident which occurred at about 6th Milestone Gambang/Kuantan road on 24 April 1981.

The undisputed facts were that on that day the plaintiff while on his way home riding his motorcycle from the direction of Kuantan along the Kuantan/Gambang road and on reaching the 6th Milestone at the junction of Kuantan/Pekan met with an accident in which his motorcycle collided with a motorcar coming from the opposite direction driven by the 1st defendant. In Court, the plaintiff (PW1) gave one version of the incident and the 1st defendant gave another. According to the plaintiff when he arrived at the 6th Milestone at the Kuantan/Pekan junction a motor lorry overtook him and then made a turn to the left into the road leading to Pekan without giving any indication to turn left. The plaintiff applied his brakes so that the lorry could pass and then after proceeding for about twenty to thirty feet he saw two cars in single file coming from the opposite direction, the rear car (driven by the 1st defendant) was in the process of overtaking the car in front. While overtaking the other car it encroached into the path of the plaintiff and a collision occurred dragging the plaintiff and his motorcycle to its (the motorcar) side of the road. The plaintiff was thrown off his motorcycle.

On the other hand according to the 1st defendant before reaching the Kuantan/Pekan junction he was following a lorry and then the lorry slowed down and at the same time the driver of the lorry gave a hand signal indicating that he was going to turn to the right into the road leading to Pekan. The 1st defendant also applied his brakes and when the lorry was in the course of turning to the right the 1st defendant saw the plaintiff's motorcycle flung towards the off-side of his car and a collision occurred. He was not overtaking any car at the time as alleged by the plaintiff.

Upon close scrutiny of the plaintiff's testimony I found material contradictions between his evidence in Court and his police report. In his police report which was made four days after the accident he stated that "satu lorry dari Jalan Gambang masuk ke Jalan Pekan dan saya terbabas dan sebuah kereta Mercedez didepan saya terus langgar saya." During cross-examination he was asked as to what he meant by "terbabas". His answer was that when he applied the brakes his motorcycle still continued moving. However when it was directly put to him the meaning of "terbabas" in that he skidded and lost control he did not agree. In Malay "terbabas" connotes a change of direction as a result of loss of control. A more reasonable version of the accident would be that somehow when the lorry came to be in front of the plaintiff the lorry was on the plaintiff's lane and the lorry driver must have then applied his brakes a little so as to slow down in order to turn into Jalan Pekan and at that time the plaintiff who must have been travelling at some speed suddenly found himself in a

tight spot with the lorry close in front of him applied his brakes and in the process of attempting to take evasive action he skidded and lost control and went off to his right side and knocked into the off-side of the 1st defendant's car. This would be more consistent with 1st defendant's version who said that before reaching the Kuantan/Pekan junction he had been following a lorry for a short while going towards Kuantan. Just before arriving at the said junction the lorry in front of him showed down and gave a hand signal indicating that he was going into Jalan Pekan. When the lorry was half way in the process of turning to the right he saw a motorcycle flung towards his car. He said there was only one lorry then and it was coming from Jalan Gambang meaning the same lorry which he had been following. In his police report, the plaintiff stated "satu lori dari Jalan Gambang masuk ke Jalan Pekan..." With the word "dari" and that the plaintiff was then coming from Kuantan, the plaintiff must have meant that the lorry he was talking about must be the one which was coming from the opposite direction. This would further lend weight to the defendant's version. I am more than convinced that the plaintiff was not telling the truth when he said that a lorry overtook him and then it turned left into Jalan Pekan. Also the absence of dragging or scratch marks on the road surface from the right lane on the other side of the centre white line to the left lane as one faces Kuantan weighed very much against the testimony of the plaintiff in Court. The plaintiff said that the oncoming car knocked into him and then dragged him and his motorcycle to the other side of the road meaning the 1st defendant's side of the road. In my judgment this could not have been possible. Firstly it must be remembered that the collision must have taken place at a point in the 1st defendant's lane because he said that the motorcycle knocked into his car when he had applied his brakes and he was already stationary. At that point of time he was still along his lane i.e. on the left side of the centre white line as one faces Kuantan. The sketch plan shows broken glass in front of the defendant's car with a short brake mark just about directly in front of the off-side tyre of the 1st defendant's car. The single brake mark must have been that of the motorcycle. All those suggest that the point of impact was when both the motorcar and motorcycle were on the left side of the centre white line as one faces Kuantan. Further the plaintiff's story that after the collision he and his motorcycle were dragged to the 1st defendant's side of the road could not have been true because it must be noted that the damage was on the front off-side of the car and if the car had crossed the centre white line and gone onto the other lane in the process of overtaking and travelled in the path of the motorcycle and at the same time the motorcycle had come straight heading for off-side of the car, then upon impact the car would have deflected to its right side and would in all probability have gone or landed on the edge of the road on the right side as one faces Kuantan. Therefore the car could not have been found where it was almost parallel to the centre white line on its side of the road (F to I = 4ft L& G to I = 3ft 6ins - F being the front off-side tyre of the car while G the rear off-side tyre of the car while I is the centre white line.) The position of the car as in the sketch plan in fact was supportive of the defendant's version. The front off-side tyre was 4 feet from the centre white line while the rear off-side tyre was 3 feet 6 ins. The position of the car therefore was somewhat at an angle to the centre white line the front part having been deflected to its left by six (6) inches. So the motorcycle must have come diagonally from its side of the road onto the lane of the 1st defendant's car and hit the front off-side of the car and thus deflected the car to its left away from the centre white line. I found therefore that the plaintiff had failed to prove his case and accordingly I dismissed his claim with costs.

Also found at [1989] 2 CLJ 1271